

EXHIBIT “A”

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CONTRACT FOR PURCHASE OF SERVICE -
AIRLINE INCENTIVE AGREEMENT

I. PARTIES

This contract is between the Department of Finance, a department of the Commonwealth of the Northern Mariana Islands and referred to herein as “the Commonwealth,” and Marianas Pacific Express, LLC, doing business as Marianas Southern Airways, and referred to in this contract as the “Contractor.”

Contractor is a limited liability corporation.

The David Dlg. Atalig, Secretary of Finance is the Expenditure Authority for the Department of Finance. Any reference to the expenditure authority in this contract is a reference to David Dlg. Atalig, Secretary of Finance. The Expenditure Authority may take any action on behalf of the Commonwealth provided for by this contract or by law.

II. NOTICE

All notices and communications required by this contract shall be in written form and shall be delivered to the following addresses:

Attn: David DLG. Atalig
Secretary of Finance
Department of Finance
P.O. Box 5234 CHRB
Saipan, MP 96950
E-mail: d.atalig@dof.gov.mp

Division of Procurement and Supply
Department of Finance
P.O. Box 50008
Saipan, MP 96950

Marianas Pacific Express, LLC
d/b/a Marianas Southern Airways
PMB 583 Box 10000
E-mail: k.stewart@IFlymarianas.com

III. COMMUNICATION

The Contractor shall maintain communications with Department of Finance at all stages of the Contractor’s work. The Contractor will submit any questions it may have to the Department of Finance regarding the performance of the contract.

IV. GENERAL PURPOSE

The purpose of this contract is for the Commonwealth to procure from the Contractor the services described in this contract and in the attached exhibits and to enjoy any warranty or other goods provided for by this contract. The services being procured are described as follows:

Tourism is a vital part of the economy of the CNMI, however, the COVID-19 pandemic severely curtailed tourism to the CNMI from outside the CNMI and also reduced inter-island travel within the CNMI. The federal government, through the American Rescue Plan Act ("ARPA"), U.S. P.L. 117-2, subtitle M, section 602(c), provided funds to the CNMI whereby the CNMI could, in turn, provide funding to maintain or revive tourism and tourism related activities in the CNMI.

The purpose of this contract is to establish an incentive framework between the Commonwealth and the Contractor whereby the Contractor would be incentivized to provide inter-island passenger and cargo service in the Marianas Islands. This incentive framework will take the form of an Initial Incentive Fund, a Flight Incentive Program, and Government Related Pricing.

The services being purchased by this contract and the incentive framework are further described in **Exhibit B** and **C**. If the description of the services in **Exhibit B** and **C** conflict with the description of the services in this contract, then the description in this contract will control.

V. CONTRACTOR TO PROVIDE EQUIPMENT

The Contractor will provide all equipment and personnel necessary to complete this contract.

VI. WARRANTY

The services purchased by this contract are subject the warranties provided for by law.

VII. CONTRACT DOCUMENTS

The following instruments shown in the table below, constitute the contract documents ("Contract Documents") and are incorporated as part of the Contract thereof. If any of the attached documents conflict with this contract, then the language of this contract will control.

EXHIBIT	NAME OF DOCUMENT
A	Standard Terms and Conditions
B	Airline Incentive Framework
C	Marianas Southern Airways Proposal

VIII. CONSIDERATION AND CEILING CONTRACT PRICE

Contractor agrees to perform the services described in this contract and the documents attached and incorporated into this contract. The Commonwealth agrees to make incentive payments in the amount and at the rate outlined Exhibit B in exchange for the services. The ceiling price for this Contract is eight million dollars (\$8,000,000.00). In addition, the consideration for this agreement is in the mutual covenants and stipulations hereby agreed to by the parties and set out in the following paragraphs.

IX. DURATION OF CONTRACT

The Contractor will begin its performance upon receipt of a Notice to Proceed by the Commonwealth.

This contract will remain in effect for a two-year period beginning on the date the Notice to Proceed was issued.

X. CONTRACT EXTENSION

The Commonwealth may extend the term of this contract by written notice to the Contractor thirty (30) days before the contract expires. This extension provision may be exercised more than once, but the total extension of performance may not exceed six (6) months. If the Commonwealth exercises its option to extend this contract, then the contract will continue without any change in the terms and conditions of this contract.

XI. DELIVERY AND PAYMENT

The Contractor agrees to begin, and to continue for as long as this contract provides, to perform services described in this Contract, unless and until the Contractor has already performed services corresponding to, and invoiced the Department of Finance, for the full ceiling price of this Contract. The Contractor will invoice the Commonwealth and will be paid according to the following schedule:

See Exhibit B

XII. SIGNATURE REQUIREMENTS

No Contract can be formed prior to the approval of all required signatories, as evidenced by the signature affixed below of each of them, made in the order listed. The Contract shall become effective upon certification of contract completion by the Director of Procurement and Supply.

XIII. ADJUSTMENTS OF TIME FOR PERFORMANCE

The Expenditure Authority may grant the Contractor up to thirty additional days to complete the delivery of the services required by this contract. A grant of additional time will only be effective if it is placed in writing and signed by the Expenditure Authority.

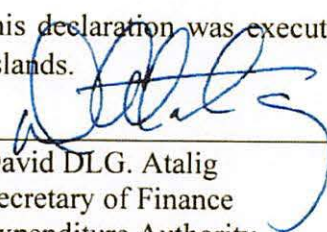
The Contractor may grant the Commonwealth additional time, as necessary, to complete the payment for the services. A grant of additional time will only be effective if it is placed in writing and signed by an agent of the Contractor.

XIV. SIGNATURES

Expenditure Authority

I declare that I have complied with the Commonwealth procurement regulations; that this contract is for a public purpose; and that the contract does not waste or abuse public funds. I declare that I, personally, have the authority to obligate the expenditure of funds for this contract. I declare under penalty of perjury that the foregoing is true and correct and that

this declaration was executed this day in the Commonwealth of the Northern Mariana Islands.

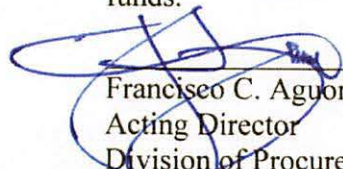


David DLG. Atalig
Secretary of Finance
Expenditure Authority

____03/10/2022_____
Date:

Procurement and Supply

I hereby certify that to the best of my information and belief this contract is in compliance with the CNMI Procurement Regulations, is for a public purpose, the contractor is a responsible contractor, and the contract does not waste or abuse public funds.



Francisco C. Aguon
Acting Director
Division of Procurement Services

____03/10/2022_____
Date

Secretary of Finance

I hereby certify that the funds identified below are available and have been committed for funding of this Contract:

Account: AR88990002

Amount: \$8,000,000.00



David DLG. Atalig
Secretary of the Department of Finance

____03/10/2022_____
Date

Attorney General

I hereby certify that this contract has been numbered, review and approved as to form and legal capacity.

Edward Manibusan
Attorney General

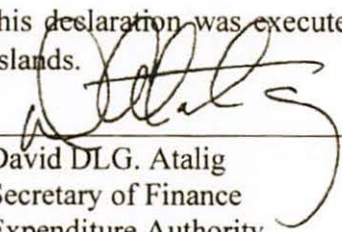
Date

Governor

Ralph Deleon Guerrero Torres
Governor

Date

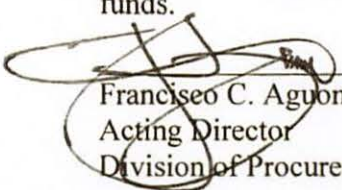
this declaration was executed this day in the Commonwealth of the Northern Mariana Islands.


David DLG. Atalig
Secretary of Finance
Expenditure Authority

03/10/2022
Date:

Procurement and Supply

I hereby certify that to the best of my information and belief this contract is in compliance with the CNMI Procurement Regulations, is for a public purpose, the contractor is a responsible contractor, and the contract does not waste or abuse public funds.


Francisco C. Aguon
Acting Director
Division of Procurement Services

03/10/2022
Date

Secretary of Finance

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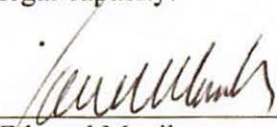
Amount: \$8,000,000.00


David DLG. Atalig
Secretary of the Department of Finance

03/10/2022
Date

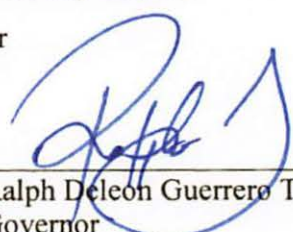
Attorney General

I hereby certify that this contract has been numbered, review and approved as to form and legal capacity.


Edward Manibusan
Attorney General

3/17/2022
Date

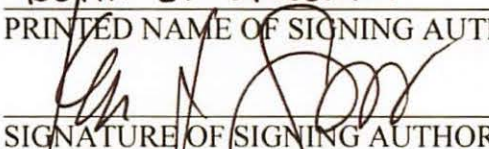
Governor


Ralph Deleon Guerrero Torres
Governor

3/21/2022
Date

Contractor – Marianas Pacific Express, LLC:


On behalf of the Contractor, I represent that I am authorized to bind the Contractor to the terms of this Contract, and by my signature I do hereby accept and bind the Contractor to the terms of this Contract. I further represent for the Contractor that no person associated with the Contractor has retained any person in violation of the Commonwealth Procurement Regulations.

KEITH J. STEWART
 PRINTED NAME OF SIGNING AUTHORITY

 SIGNATURE OF SIGNING AUTHORITY

MANAGER
 TITLE
3 / 21 / 2022
 Date

CERTIFICATION OF CONTRACT COMPLETION

I hereby certify that this contract bears all signatures and is therefore complete.


 Francisco C. Aguon
 Acting Director
 Division of Procurement Services

03/21/2022
 Date

XV. END OF CONTRACT DOCUMENT

Procurement Information
 (For government purposes only)

Method of Procurement (Check one only)

- ☐ Competitive Sealed Bids
- ☐ Competitive Sealed Proposal
- ☐ Small Purchase
- ☒ Sole Source
- ☐ Emergency
- ☐ Expedited

Type of Procurement (Check one only)

- ☐ Initial procurement
- ☐ Subsequent procurement –
- ☐ Following Bid Protest
- ☐ Government's Option
- ☐ Replacement for Defaulted Contractor

Government contract numbers of all related contracts with the Vendor:
Insert Contract Numbers, or NONE

Exhibit A

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
STANDARD TERMS AND CONDITIONS

§ 1. **Entire Agreement:**

With respect to the subject matter of the Contract, the Contract, as expressed in the Contract Documents, represents the entire agreement between the Commonwealth and the Contractor, and supersedes all prior agreements and understandings. No revision to the express terms of the contract shall be implied, except as required by law.

§ 2. **Contract Not Assignable:**

The Contract and all of its covenants shall inure to the benefit of and be binding respectively upon the Commonwealth and the Contractor and its partners, successors, assigns and legal representatives. The Contractor may not assign, transfer, encumber, or sublet its interest or obligations under the Contract without written consent of the Commonwealth.

§ 3. **Independent Contractor:**

- (a) For purposes of the application of Part 700, "Ethics in Public Contracting" of the CNMI Procurement Regulations, the Contractor and its employees, agents, subcontractors, and representatives shall be considered employees of the Commonwealth government.
- (b) Except as stated in the CNMI Procurement Regulations or authorized in writing by the Contracting Officer and only under the terms so stated or authorized, neither the Contractor nor its employees or subcontractors shall act for, represent, or bind the Commonwealth in any capacity or manner whatsoever, or be deemed or considered an employee, agent, or representative of the Commonwealth, or be deemed to have any relationship with the Commonwealth other than that of independent contractor.

§ 4. **No Waiver by Commonwealth:**

The failure of the Commonwealth in any one or more instances to insist upon strict performance of any of the items of the Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or options on any future occasion. Nothing contained in this Contract is intended to serve as a waiver of sovereign immunity by any entity to which sovereign immunity may be applicable.

§ 5. **Regulations Controlling:**

This contract is void if either the procurement processes or contract execution fails to comply with the Commonwealth Procurement Regulations codified by NMIAC §§ 70-30.3-001, et seq. Any procurement action of a government official or employee in violation of said regulations is not authorized by the government and is an act for which the government will not take responsibility or be liable for in any manner. The Contractor and the government Contracting Officer hereby certify that they have both read and understand said procurement regulations and have complied with all such regulations.

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§ 6. Interpretations and Validity:

- (a) This contract shall be interpreted under the laws of the Commonwealth of the Northern Mariana Islands. Where no local law is available to resolve a particular issue, reference shall be had to U.S. federal procurement law and cases similar to the matter in dispute, including the Federal Acquisition Regulation and decisions interpreting it, as well as scholarly treatises on U.S. federal procurement law.
- (b) All provisions of this Contract shall, to the extent practical, be interpreted to be consistent with the CNMI Procurement Regulations. In the event of an unresolvable conflict between any provision of the contract and the CNMI Procurement Regulations, the CNMI Procurement Regulations shall govern the Contract.
- (c) In the event of a conflict between any provision of the Contract and Agreement document and these General Conditions, the Contract and Agreement shall govern the Contract.
- (d) If the contract documents include a "Special Conditions" document, that document shall be interpreted to supplement these General Conditions and shall prevail if in conflict.
- (e) In the event the contract or the procurement action resulting in the contract is found to be in violation of the CNMI Procurement Regulations, then the Contract will not be valid under the laws of the Commonwealth of the Northern Mariana Islands, and may be found to be legally voidable. The Commonwealth will seek to have any liability asserted against it by a contractor which directly results from improper acts of a government employee to be determined judicially to be the individual liability of the employee who committed the wrongful acts.

§ 7. Contract Subject to Funding:

Continued funding of this Contract beyond the present fiscal year is contingent on availability of funding in future years. In the event that such funding does not become available, the Commonwealth may terminate the contract without any further liability.

§ 8. Satisfaction of Expenditure Authority Required:

Contractor agrees to complete the contract according to the contract terms and to the full satisfaction of the Expenditure Authority.

§ 9. Litigation:

If the Commonwealth, without any fault on its own part, becomes a party to any litigation by or against the Contractor in connection with this contract, the Contractor shall pay all costs and expenses incurred by the Commonwealth, including reasonable attorneys' fees. For the convenience of the parties and witnesses, and in the interest of justice, the venue for litigation shall be the court of appropriate jurisdiction on the island of Saipan, CNMI.

Exhibit A

§ 10. Taxes, Insurance, and Permits:

The Contractor is responsible for all applicable Commonwealth or federal taxes and fees which may become due and owing by the Contractor by reason of this contract. The Contractor is also responsible for obtaining all insurance, licenses, permits, and certificates that may be required in order to perform this contract.

§ 11. Debarment, Suspension, and Liability for Violations of Procurement Regulations:

If this contract is in violation of the procurement regulations referred to above, the Contractor may be subject to debarment or suspension from government contracting and the government Contracting Officer may be personally liable for any damages incurred, in addition to other penalties provided for by law or regulation.

§ 12. Contract Disputes:

- (a) Any dispute arising under this contract between the Commonwealth and the Contractor shall be submitted to administrative review and appeal as provided for by the procurement regulations codified by NMIAC §§ 70-30.3-001, et seq.
- (b) Commonwealth law governs this contract.
- (c) The Commonwealth will not be held liable for interest on any judgment taken as a result of any legal action in connection with this contract.
- (d) The Commonwealth will not be held liable for any punitive damages as a result of any legal action in connection with this contract.
- (e) The Commonwealth will not be held liable for any attorneys' fees incurred by the Contractor as a result of any legal action in connection with this contract.

§ 13. Gratuities:

It shall be a breach of contract for the Contractor to offer, give, or agree to give a gratuity or an offer of employment to any employee or former employee in connection with the execution of this contract. It shall be a breach of contract for any government employee to solicit, demand, accept, or agree to accept from the contractor, a gratuity, or an offer of employment in connection with the execution of this contract. See § 70-30.3-725 Gratuities and Kickbacks.

§ 14. Kickbacks:

It shall be a breach of contract for any payment, gratuity or offer of employment to be made by or on behalf of a subcontract under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order. See § 70-30.3-725 Gratuities and Kickbacks.

Exhibit A

§ 15. Representation of Contractor Concerning Contingent Fees:

The Contractor hereby represents that, in accordance with § 70-30.3-730, it has not retained any person to solicit or secure government contracts upon an agreement or understanding for a commission percentage, brokerage or contingent fee except for the retention of a bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

§ 16. Payments to Contractor

- (a) The Commonwealth will pay the contract price as provided in this clause.
- (b) The Commonwealth will make progress payments monthly as the work proceeds or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer.
- (c) Before the first progress payment under the Contract becomes due, the Contractor shall prepare a breakdown of the contract price acceptable to the Contracting Officer showing the amount included therein for each principal category of the work, in such detail as requested. The values in the breakdown will be used to provide a basis for determining progress payments. The Contractor's overhead and profit shall be prorated throughout the life of the contract.
- (d) Except as may be otherwise provided in the Contract, the contract price shall include all applicable Federal, Commonwealth of the Northern Mariana Islands, and local taxes and duties.
- (e) Estimates on which progress payments are based shall include the value (as determined by the Contracting Officer) of satisfactory in place work performed pursuant to change orders.
- (f) Preparatory work done will not be taken into consideration in preparing estimates upon which progress payments are based.
- (g) The Contracting Officer, at his discretion, may authorize payments for materials delivered and stored on the work site. The Contractor is fully responsible for the materials delivered and stored by him.
- (h) The Contractor, prior to receiving a progress or final payment under the Contract, shall submit to the Contracting Officer a certification that the Contractor has made payments from the proceeds of prior payments, or that he will make timely payment from the proceeds of the progress payments or final payment due him, to his workers, subcontractors, and suppliers in accordance with the Contractor's contractual agreement with them.
- (i) In making each progress payment, there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of the contract work. Furthermore, upon completion and acceptance of each separate building, public work, or other division of the contract on which the price is stated separately in the contract, payment may be made therefore without retention of a percentage.
- (j) All material and work covered by progress payments made shall thereupon become the sole property of the Commonwealth, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which the payments have been made or the restoration of any damaged work, or as waiving the right of the Commonwealth to require the fulfillment of all of the terms of the contract.
- (k) Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon the presentation of a properly executed voucher and after the

Exhibit A

Contractor shall have furnished the Commonwealth with a written release of all claims against the Commonwealth arising by virtue of the Contract, other than claims stated in amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the Contract has been assigned under the "Assignment of Claims" clause, a release may also be required of the assignee.

§ 17. Changes:

- (a) **Change Order.** By a written order at any time, the Procurement Officer or the Official with Expenditure Authority may, subject to all appropriate adjustments, make changes within the general scope of this contract in compliance with applicable Procurement Regulations.
- (b) **Adjustments of Price or Time for Performance.** If any change order increases or decreases the Contractor's cost of, or the time required for the performance of any part of the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with applicable "Price Adjustment" clauses of this contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the Commonwealth promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudice any claim for additional compensation, or an extension of time for completion.
- (c) **Time Period for Claim.** Within thirty (30) days after receipt of a written change order under paragraph (1) (Change Order) of this clause, unless such period is extended by the Chief Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the Commonwealth is prejudiced by the delay in notification.
- (d) **Claims Barred After Final Payment.** No claim by the Contractor for adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.
- (e) **Other Claims Not Barred.** In absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on an Official With Expenditure Authority's Actions or Omissions, Notice of Claim" clause, or for breach of contract.

§ 18. Stop Work Order:

- (a) **Order to Stop Work.** The Chief Procurement Officer may, by written order to the Contractor, at any time, and without notice to any Surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a

Exhibit A

Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed the Chief Procurement Officer shall either: (a) cancel the stop work order; or (b) terminate the work covered by such order as provided in the "Termination For Default" clause or the "Termination For Convenience" clause of this contract.

- (b) **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule and/or the contract price shall be modified in writing accordingly, if:
- i. The Stop Work order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of any part of this contract; and
 - ii. The contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any claim may be received and acted upon at any time prior to final payment under this contract.
- (c) **Termination of Stop Work.** If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable cost resulting from the stop work order shall be allowed by adjustment or otherwise.
- (d) **Adjustment of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this contract.

§ 19. Claims Based on the Acts or Omissions of the Expenditure Authority:

- (a) **Notice of Claim.** If any action or omission on the part of the Expenditure Authority, or designee of such official, requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced claim for additional compensation, damages, or an extension of time for completion, provided:
- (i) The Contractor shall have given written notice to the Expenditure Authority and Chief Procurement Officer, or designee of such officer:
 - A. Prior to the commencement of the work involved, if at that time, the Contractor knows of the occurrence of such action or omission.

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- B. Within thirty (30) days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have knowledge prior to the commencement of the work; or
 - C. Within such further time as may be allowed by the Chief Procurement Officer in writing.
- (b) This notice shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Chief Procurement Officer or, designee of such officer, upon receipt of such notice, may rescind any action, remedy such omission, or take such other steps as may be advisable in the discretion of the Chief Procurement Officer or designee of such officer.
 - i. The notice required by subparagraph (a) of this paragraph describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
 - ii. The Contractor maintains and, upon request, makes available to the Chief Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- (c) **Limitations of Clause.** Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any Commonwealth officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
- (d) **Adjustment of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the "Price Adjust" clause of this contract.

§ 20. Price Adjustment:

- (a) Price Adjustment Methods.** Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:
- i. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - ii. By unit prices specified in the contract or subsequently agreed upon;
 - iii. By the cost attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract subsequently agreed upon;
 - iv. In such other manner as the parties may mutually agree; or
 - v. In the absence of agreement between the parties, by a unilateral determination by the Chief Procurement Officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Chief Procurement Officer in accordance with generally accepted accounting principles.

Exhibit A

- (b) **Submission of Cost or Pricing Data.** The Contractor shall provide cost of pricing data for any adjustments.

§ 21. **Termination for Default:**

- (a) **Default.** If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Chief Procurement Officer may notify the Contractor in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Chief Procurement Officer, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the Chief Procurement Officer may procure similar supplies or services, in a manner and upon terms deemed appropriate by the Chief Procurement Officer. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (b) **Contractor's Disputes.** Notwithstanding termination of the contract and subject to any direction from the Chief Procurement Officer, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the Commonwealth has an interest.
- (c) **Compensation.** Payment for completed supplies delivered and accepted by the Commonwealth shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Chief Procurement Officer; if the parties fail to agree, the Chief Procurement Officer shall set an amount. The Commonwealth may withhold from amounts due the Contractor such sums as the Chief Procurement Officer deems to be necessary to protect the Commonwealth against loss because of outstanding liens or claims of former lien holders and to reimburse the Commonwealth for the excess costs incurred in procuring similar goods and services.
- (d) **Excuse for Non-Performance or Delayed Performance.** Except with respect to defaults of subcontractors, the Contractor shall not be in accordance with its terms (including any failure of the Contractor to make progress in the protection of the work hereunder which endangers such performance) if the Contractor has notified the Chief Procurement Officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of god; acts of public enemy; acts of the Commonwealth and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemic; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failures arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other

Exhibit A

sources in sufficient time to permit the Contractor to meet the contract requirements. Upon the request of the Contractor, the Chief Procurement Officer shall ascertain the facts and extent of such failure, and, if such Officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the Commonwealth under the clause entitled "Termination For Convenience".

- (e) **Erroneous Termination for Default.** If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provision of paragraph 4 ("Excuse For Non-Performance Or Delayed Performance") of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause providing for Termination For Convenience of the Commonwealth.
- (f) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

§ 22. Termination for Convenience:

- (a) **Termination.** The Commonwealth may, when its interests so require, terminate this contract in whole or in part for the convenience of the Commonwealth. The Commonwealth will give written notice of the termination to the Contractor if the contract is terminated for the convenience of the Commonwealth.
- (b) **Contractor's Obligation.** If the contract is terminated, then the Contractor will not incur any further obligation in connection with the terminated contract. The Contractor will work to terminate outstanding orders and subcontracts as they relate to the terminated contract, and will settle the liabilities and claims arising out of the termination. The Contractor will limit and mitigate its damages as much as possible. The Chief Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Commonwealth. The Contractor must still complete the work not terminated by the notice of termination and incur obligations as are necessary to do so.
- (c) **Compensation.**
 - (i) The Contractor shall submit a termination claim specifying the amounts due because of the Termination for convenience together with cost and pricing data to the extent required. If the contractor fails to file a termination claim within one (1) year from the effective date of the termination, the Chief Procurement Officer may pay the Contractor, if at all, an amount set in accordance with paragraph (iii) of this paragraph.
 - (ii) The Chief Procurement Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or

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pricing data to the extent required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the Commonwealth, the proceeds of any sales and supplies and manufacturing materials under paragraph 3 of this clause, and the contract price of the work not terminated.

(iii) Absent complete agreement under subparagraph (ii) of this paragraph, the Chief Procurement Officer shall pay the Contractor the following amounts, provided payments agreed to under subparagraph (ii) shall not duplicate payments under this subparagraph:

- A. Contract prices for supplies or services accepted under the contract.
- B. Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.
- C. Cost of settling and paying claims arising out of termination of subcontracts or orders pursuant to paragraph (b) of this clause. These costs must not include cost paid in accordance with subparagraph (iii) (B) of this paragraph.
- D. The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of the contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of the Contract. The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price plus reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made from the proceeds of any sales of supplies and manufacturing materials under subparagraph (ii) of this paragraph, and the contract price of work not terminated.

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§ 23. Right to Audit:

The Contractor and subcontractor or grantee and sub-grantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data or papers relevant to this contract or grant until three (3) years have passed since the final payment pursuant to this contract or grant. NMIAC § 70-30.3-275.

§ 24. Assurances and Compliance with Federal Requirements:

Any contract funded with federal funds is required to comply with all applicable federal laws, executive orders, policies regulations, and standards applicable to the specific project and provide federal agencies with access to Contractor records. Contractors have a duty to clarify applicable requirements prior to entering into the contract and by signature agree to comply with all applicable federal requirements. The Contractor, by signing the contract, affirms that they are in compliance with federal laws and regulations including, but not limited to, the following:

- (a) Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328);
- (b) OMB Circular Part A-133, Part 3;
- (c) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR chapter 60);
- (d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- (e) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5);
- (f) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by Department of Labor regulations (29 CFR Part 5);
- (g) Access by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- (h) Retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed;
- (i) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Compliance with section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and sub grants of amounts in excess of \$100,000);
- (j) Mandatory standards and policies relating to energy efficiency which are contained in the applicable Commonwealth energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871);
- (k) Lead -Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801.et seq.).

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§ 25. Design Within Cost Limitation:

- a) The Consultant shall use its best efforts to design a facility which can be constructed, under normal contracting procedures in the Northern Mariana Islands, within cost limitations, for each separate part of the facility, as provided to the Consultant by the Contracting Officer and as agreed to, in writing, by the Consultant.
- b) Unless stated otherwise in the Scope of Work or other Contract Documents, the Consultant shall be permitted to include contingencies for design, bidding, and price escalation, to determine what materials, equipment, component systems, and type of construction are to be include, and to allow for reasonable adjustments in the scope of the project to be designed. If, after receipt of competitive bids, it is found that a construction contract cannot be awarded within the cost limitations, the Consultant will, as part of the Contract, and at no additional cost to the Commonwealth, re-design, re-estimate, and perform other services as are necessary to produce a useable facility within cost limitations.
- c) In connection with the foregoing, the Consultant shall be obligated to perform such additional service at no increase in the contract price only when the Commonwealth has received competitive bids within six (6) months from the date of final approval of the Consultant's drawings and specifications.

END OF DOCUMENT